

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1858.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 164.]

The Committee on Claims, to whom was referred the petition of Mrs. Jane M. McCrabb, report:

The petitioner represents that she is the widow of the late Captain John W. McCrabb, an assistant quartermaster in the United States army; and she applies to Congress to be allowed a per centage for disbursement of moneys made by her late husband out of the special appropriations for the suppression of Indian hostilities, in addition to the regular appropriations for the quartermaster's department.

In his account rendered to the department shortly before his death, which occurred in November, 1839, Captain McCrabb charged for the disbursement of \$215,259 67, at 2½ per cent., amounting to \$5,381 10, accompanied with the following statement: "Though I have charged a per centage on my disbursements out of the appropriations for suppressing and preventing Indian hostilities from a deep conviction that it is a just and equitable claim, and should be allowed, as a just recompense for the extraordinary and unusual risks and responsibilities I had to encounter in making the said disbursements, I have retained no portion thereof."

The charge was disallowed by the accounting officers of the treasury; and the object of the petition of Mrs. McCrabb is, that Congress may allow the claim and authorize a credit to be given to her late husband, or to her, as administratrix, on the books of the Treasury Department. It is presumed, from this request of the memorialist, that Captain McCrabb died a debtor to the government, and that this claim is sought to satisfy his indebtedness to that extent.

It appears from a letter from the Quartermaster General's department to Hon. Richard Brodhead, chairman of the Senate Committee on Claims during the last Congress, dated January 16, 1855, that the whole amount of moneys disbursed by Capt. McCrabb, in Alabama and Florida, during the years 1836, 1837, 1838, and 1839, out of the appropriation for preventing and suppressing Indian hostilities in Florida, was \$234,299 85; of which was disbursed, during the third and fourth quarters of 1839, \$22,541 40. The act approved 3d of March, 1839, prohibited the

receipt by any officers having a salary of any extra allowance or compensation for disbursing public money, or the performance of any other service, unless the extra allowance or compensation was authorized by law. This act prohibits the allowance of any extra charge to Captain McCrabb upon the above sum of \$22,541 40 disbursed after its enactment. The remainder of his disbursements of said fund was made in 1836, 1837, 1838, and the first quarter of 1839, and amounted to \$211,758 45. Upon this sum, in the opinion of the committee, Captain McCrabb is justly and equitably entitled to a commission of 2½ per cent. for disbursing the same. It is clear that the disbursing of the special appropriation aforesaid was no part of his official duty as assistant quartermaster, and was imposed upon him, as appears by the letter of General Jesup, of December 15, 1853, by the sudden and pressing emergency of the public service, growing out of the Creek and Seminole wars, and the contracted force in the quartermaster's department. The disbursements were made under circumstances which subjected Captain McCrabb to great anxiety and risk of loss, and he could hardly have disbursed so large a sum, under the difficult circumstances by which he was surrounded, without considerable loss. Under this state of facts the committee think he is justly entitled to extra compensation. If he had not disbursed these sums, the government would have been compelled to employ a special agent for that purpose, at an expense not less than the amount claimed by Captain McCrabb.

The question of the equitable liability of the government, under such circumstances, to pay extra compensation, has been repeatedly adjudicated by the Supreme Court of the United States, and in every case that court has allowed such extra allowance to be plead by way of a set-off against the government, in a suit against the officer.—(See McDaniel's case, 7 Peters, 1; Ripley's case, 7 Peters, 18, and Fillebrown's, 7 Peters, 28.) In these cases, and many others, the doctrine is established that an officer of the government is equitably entitled to and will be allowed by the courts a claim for extra services rendered to the government, under the orders of a department, though there is no act of Congress providing for the case, and an auditor of the treasury could not allow the claim. In the case of General Ripley the court decided, that "for extra services performed by a military officer, under the sanction of the government, or under circumstances of peculiar emergency, the court may allow a reasonable compensation by way of offset." Congress has repeatedly recognized this principle. The act of August 30, 1852, for the relief of M. Hetzel, (10 Stat. 736,) and the act of 3d August, 1854, for the relief of Helen Mackay, widow of Colonel Eneas Mackay, (10 Stat. 813,) are in point. These cases were similar, in all respects, to the case of Captain McCrabb, except that the circumstances attendant upon his disbursements were of a more difficult and hazardous character than in the other cases.

The committee consider the claim of the memorialist, in this case, to the extent indicated, a just and equitable one, and in accordance with the principles decided by the Supreme Court and the precedents established by Congress in the cases above alluded to. They therefore report the accompanying bill, and recommend its passage.